

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1279 of 2016**

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Sita Ram Dubey & Ors

.... Appellant/s

Versus

Suresh Pandey & Ors

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Kamlesh Kumar Sharma

For the Respondent/s : Mr.

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**CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER**

2 07-12-2016 Heard the learned counsel, Mr. Kundan Bahadur Singh
for the petitioners.

Perused the impugned order dated 01.07.2016 passed
by Sub Judge IV, Patna in Title Suit No.184 of 2001 whereby the
learned Court below rejected the amendment application filed by
the plaintiffs-petitioners on the ground that the amendment sought
for in the relief is barred by law of limitation because the
plaintiffs-petitioners are now by way of amendment trying to
challenge the compromise decree after lapse of about 100 years.

The Hon'ble Supreme Court in the case of **Md. Noorul
Hoda v. Bibi Raifunnisa and others, (1996) 7 Supreme Court
Cases 767** has held that "when the plaintiff seeks to establish his
title to the property which cannot be established without avoiding
the decree or an instrument that stands as an insurmountable
obstacle in his way which otherwise binds him, though not a party,



the plaintiff necessarily has to seek a declaration and have that decree, instrument or contract cancelled or set aside or rescinded.” Article 58 of the Limitation Act provides that for any other such declaration, the limitation period is only three years from the date of right to sue accrues to the plaintiff.

The Hon’ble Supreme Court in the case of **Inderjit Singh Grewal v. State of Punjab & Anr., 2012(1) BLJ 42 (SC)** has held that even if an order is void or voidable, same requires to be set aside by competent court. Even if a decree is void ab initio, declaration to that effect has to be obtained from competent court. Such declaration cannot be obtained in collateral proceeding.

The Hon’ble Supreme Court recently in the case of **L.C. Hanumanthappa v. H.B. Shivakumar, (2016) 1 Supreme Court Cases 332** has held that while enacting Article 58 of the Limitation Act, 1963, the legislature has designedly made a departure from the language of Article 120 of 1908 Act. This would mean that if a suit is based on multiple causes of action, the period of limitation will begin to run from the date when the right to sue first accrues. To put it differently, successive violation of the right will not give rise to fresh cause of action and the suit will be liable to be dismissed if it is beyond the period of limitation counted from the day when the right to sue first accrued. The



Hon'ble Supreme Court further in the said decision held that all amendments ought to be allowed which satisfy the two conditions: (a) of not working injustice to the other side, and (b) of being necessary for the purpose of determining the real questions in controversy between the parties. It is merely a particular case of this general rule that where a plaintiff seeks to amend by setting up a fresh claim in respect of a cause of action which since the institution of the suit had become barred by limitation, the amendment must be refused; to allow it would be to cause the defendant an injury which could not be compensated in costs by depriving him of a good defence to the claim.

In the present case, therefore, the learned Court below has rightly rejected the amendment application since the claim made by the petitioners is barred by law of limitation.

Thus, I find no reason to interfere with the impugned order and accordingly, this Civil Miscellaneous application is dismissed.

(Mungeshwar Sahoo, J)

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